117TH CONGRESS
2D SESSION

H. R. 7449

To establish prohibitions on the use of automated systems in a discriminatory manner, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 7, 2022

Mr. BROWN of Maryland (for himself and Ms. SCHAKOWSKY) introduced the following bill; which was referred to the Committee on Oversight and Reform, and in addition to the Committees on Education and Labor, Armed Services, Science, Space, and Technology, Intelligence (Permanent Select), and the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To establish prohibitions on the use of automated systems in a discriminatory manner, and for other purposes.

1   *Be it enacted by the Senate and House of Representa-*

2 *tives of the United States of America in Congress assembled,*

3   **SECTION 1. SHORT TITLE.**

4   This Act may be cited as the "Digital Civil and

5 Human Rights Act of 2022".

SEC. 2. PROHIBITION OF DISCRIMINATORY USE OF AUTO-MATED SYSTEMS.

(a) IN GENERAL.—No Federal agency, court of the United States, State government, local government, or tribal government may use any automated decision system that has a disparate impact on the basis of race, national origin, color, religion, disability, or sex.

(b) PUBLICLY AVAILABLE REPOSITORY.—The head of each Federal agency shall maintain a site on the public website of the Federal agency that contains a bias datasheet for each automated decision system used by such Federal agency with the potential for a disparate impact on the bases established under subsection (a).

(c) DEFINITION.—In this section the term "bias datasheet" means a datasheet conforming to the standard published pursuant to section 22B of the National Institute of Standards and Technology Act.

(d) PROHIBITION AGAINST DISCRIMINATION OR SEGREGATION IN PLACES OF PUBLIC ACCOMMODATION.—Section 201 of the Civil Rights Act of 1964 (42 U.S.C. 2000a) is amended by adding at the end the following:

"(f) It shall be an unlawful practice for a place of public accommodation to use in its operations affecting commerce any automated decision system (as such term is defined in section 701) that has a disparate impact on the basis of race, color, religion, sex, or national origin.".

1 (e) Unlawful Employment Practices.—Section

2 703 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–

3 2) is amended by adding at the end the following:

4 "(o) It shall be an unlawful employment practice for

5 a respondent, in connection with the selection or referral

6 of applicants or candidates for employment or promotion,

7 to use any automated decision system that has a disparate

8 impact on the basis of race, color, religion, sex, or national

9 origin.".

10 (f) Definitions in Civil Rights Act of 1964.—

11 Section 701 of the Civil Rights Act of 1964 (42 U.S.C.

12 2000e–2) is amended by adding at the end the following:

13 "(o) The term 'automated decision system' means

14 any system, software, or process (including one derived

15 from machine learning, statistics, or other data processing

16 or artificial intelligence techniques and excluding passive

17 computing infrastructure) that uses computation, the re-

18 sult of which serves as a basis for a decision or judgment.

19 "(p) The term 'court of the United States' has the

20 meaning given such term in section 451 of title 28, United

21 States Code.".

22 (g) Rulemaking.—Not later than 1 year after the

23 date of enactment of this Act, the head of each Federal

24 agency, in coordination with the Director of the Office of

1 Management and Budget, shall make rules to carry out
2 this section and the amendments made by this section.

SEC. 3. PROHIBITION OF BIAS IN USE OF AUTOMATED SYS-
TEMS BY THE DEPARTMENT OF DEFENSE.

5   (a) IN GENERAL.—Chapter 3 of title 10, United
6 States Code, is amended by adding at the end the fol-
7 lowing new section:

"§ 130l. Prohibition of use of automated systems with
bias

10   "(a) IN GENERAL.—None of the funds authorized to
11 be appropriated or otherwise made available for any fiscal
12 year for the Department of Defense may be used for the
13 use of any automated decision system with any adverse
14 distinction based on race, religion, sex, health, age, or any
15 other similar criteria.

16   "(b) PUBLICLY AVAILABLE REPOSITORY.—Not later
17 than one year after the effective date of this section, the
18 Secretary of Defense shall maintain a site on the public
19 website of the Department of Defense that contains a bias
20 datasheet for each automated decision system used by the
21 Department of Defense with the potential for an adverse
22 distinction on the bases established under subsection (a).

23   "(c) DEFINITIONS.—In this section:

1 ''(1) The term 'automated decision system' has
2 the meaning given such term in section 701 of the
3 Civil Rights Act of 1964.

4 ''(2) The term 'adverse distinction' has the
5 meaning given such term through the application of
6 the Geneva Conventions and customary international
7 law.

8 ''(3) The term 'bias datasheet' means a
9 datasheet conforming to the standard published pur-
10 suant to section 22B of the National Institute of
11 Standards and Technology Act and includes an ad-
12 dendum related to international law.''.

13 (b) REPORT REQUIRED.—

14 (1) IN GENERAL.—Not later than 1 year after
15 the date of the enactment of this Act, the Secretary
16 of Defense, in coordination with the Secretary of
17 State, shall submit to the appropriate congressional
18 committees a report on the implementation of the
19 amendments made by this section.

20 (2) ELEMENTS.—The report required by sub-
21 section (b) shall include the following:

22 (A) An accounting of regulations pre-
23 scribed, revised, or withdrawn in the implemen-
24 tation of the prohibition created under sub-
25 section (a).

1　　　　(B) An identification and assessment of

2　　　any automated decision systems used by the

3　　　Department of Defense prior to the enactment

4　　　of this Act which had an adverse distinction

5　　　based on race, religion, sex, health, age, or any

6　　　other similar criteria.

7　　　　(C) Recommendations for actions to affirm

8　　　the same prohibition for all parties to the Gene-

9　　　va Conventions.

10　　　(3) FORM.—The report under paragraph (1)

11　shall be submitted in unclassified form, but may

12　contain a classified annex. The unclassified portion

13　of the report shall be posted on a publicly available

14　website of the Department of Defense.

15　(c) DEFINITION.—In this section the term "appro-

16　priate congressional committees" means—

17　　　(1) the congressional defense committees;

18　　　(2) the Committee on Foreign Relations and

19　the Select Committee on Intelligence of the Senate;

20　and

21　　　(3) the Committee on Foreign Affairs and the

22　Permanent Select Committee on Intelligence of the

23　House of Representatives.

24　(d) CLERICAL AMENDMENT.—The table of sections

25　at the beginning of such chapter is amended by inserting

1 after the item relating to section 130k the following new

2 item:

"130l. Prohibition of use of automated systems with bias.".

3 (e) EFFECTIVE DATE.—The amendments made by

4 this section shall take effect on the date that is one year

5 after the date of the enactment of this Act.

SEC. 4. REPORT ON INTELLIGENCE COMMUNITY USE OF

AUTOMATED DECISION SYSTEMS WITH BIAS.

8 (a) IN GENERAL.—Not later than 180 days after the

9 date of the enactment of this Act, the Director of National

10 Intelligence shall submit to the appropriate congressional

11 committees a report on the use within the intelligence

12 community of automated decision systems with an adverse

13 distinction based on race, religion, sex, health, age, or any

14 other similar criteria.

15 (b) ELEMENTS.—The report required by subsection

16 (a) shall include the following:

17 (1) An accounting of the automated decision

18 systems used by the intelligence community, exclud-

19 ing cyberspace operations, with the potential for an

20 adverse distinction based on race, religion, sex,

21 health, age, or any other similar criteria.

22 (2) An assessment of any adverse distinctions

23 based on race, religion, sex, health, age, or any other

24 similar criteria.

1   (3) An assessment of the impact of a prohibi-

2   tion within the intelligence community on automated

3   decision systems with an adverse distinction based

4   on race, religion, sex, health, age, or any other simi-

5   lar criteria.

6   (4) An assessment of the programs and funding

7   required to replace within the intelligence commu-

8   nity any automated decision systems with an adverse

9   distinction based on race, religion, sex, health, age,

10   or any other similar criteria.

11   (c) FORM.—The report under subsection (a) may be

12   submitted in classified form, but if so submitted shall in-

13   clude an unclassified executive summary. The unclassified

14   portion of the report shall be posted on a publicly available

15   website of the Office of the Director of National Intel-

16   ligence.

17   (d) DEFINITION.—In this section:

18   (1) The term ''appropriate congressional com-

19   mittees'' means—

20   (A) the congressional defense committees;

21   (B) the Committee on Foreign Relations

22   and the Select Committee on Intelligence of the

23   Senate; and

1   (C) the Committee on Foreign Affairs and

2   the Permanent Select Committee on Intelligence

3   of the House of Representatives.

4   (2) The term ''intelligence community'' has the

5 meaning given such term in section 3003(4) of title

6 50, United States Code.

7   (3) The term ''automated decision system'' has

8 the meaning given such term in section 701 of the

9 Civil Rights Act of 1964.

10   (4) The term ''adverse distinction'' has the

11 meaning given such term through the application of

12 the Geneva Conventions and customary international

13 law.

14 **SEC. 5. ESTABLISHMENT OF DATASHEET STANDARDS ON**

15   **AUTOMATED DECISION SYSTEM BIAS.**

16   (a) IN GENERAL.—The National Institute of Stand-

17 ards and Technology Act (15 U.S.C. 271 et seq.) is

18 amended by inserting after section 22A the following new

19 section:

20 **''SEC. 22B. AUTOMATED DECISION SYSTEM BIAS**

21   **DATASHEETS.**

22   ''(a) IN GENERAL.—The Director of the Institute, in

23 consultation with such researchers, private sector industry

24 experts, legal experts, and civil rights experts as the Direc-

25 tor considers appropriate, shall develop, publish, and

1 maintain standards for reporting bias in an automated de-

2 cision system.

3   "(b) ELEMENTS.—The standards described in sub-

4 section (a) shall require the following:

5   "(1) An assessment of bias on the basis of race,

6   national origin, color, religion, disability, sex, sexual

7   orientation, or gender identity.

8   "(2) The source, size, and characteristics of any

9   dataset used as the basis for the automated decision

10   system.

11   "(3) The content is accessible and machine

12   readable in accordance with the 21st Century Inte-

13   grated Digital Experience Act (44 U.S.C. 3501

14   note).

15   "(4) Any other requirements as determined by

16   the Director.

17   "(c) DEFINITIONS.—In this section the term 'auto-

18 mated decision system' has the meaning given such term

19 in section 701 of the Civil Rights Act of 1964.".

20   (b) DEADLINE FOR IMPLEMENTATION.—Not later

21 than 18 months after the date of the enactment of this

22 Act, the Director shall initially publish the standards re-

23 quired under subsection (a).

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